IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

No. 84-166

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WINDRUSH APARTMENTS, LTD.
d/b/a WINDRUSH APARTMENTS, LEO MANAGEMENT
COMPANY, THOMAS L. WILLIAMS,
and TENA McGILL,

Petitioners,

v.

DERREAN GRESHAM and METRO FAIR HOUSING
SERVICES,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

RESPONDENT METRO FAIR HOUSING SERVICES' BRIEF IN OPPOSITION

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE.....	1
ARGUMENT.....	2
CONCLUSION.....	7

TABLE OF AUTHORITIES

Case	Page
Atchinson, Topeka and Santa Fee Railway Co. v. Lennen, 640 F.2d 255 (10th Cir. 1981).....	3,6
Hecht Co. v. Bowles, 321 U.S. 321 (1944).....	6
Heublein, Inc. v. Federal Trade Commission, 539 F. Supp. 123 (D. Conn. 1982)	3
Lathan v. Volpe, 455 F.2d 1111 (9th Cir. 1971).....	6
TOPIC v. Circle Realty, 377 F. Supp. 111 (C.D. Cal. 1974), rev'd on other grounds, 532 F.2d 1273 (9th Cir. 1975), cert. denied, 429 U.S. 859, 97 S. Ct. 160, 50 L.Ed. 2d 137 (1976).....	3
United States v. Hayes International Corporation, 415 F.2d 1038 (5th Cir. 1969).....	2
U.S. v. San Francisco, 310 U.S. 16 (1940).....	6
U.V. Industries, Inc. v. Posner, 466 F. Supp. 1251 (D. Maine 1979)....	3
Zuch v. Hussey, 394 F. Supp. 1028 (E.D. Mich. 1975).....	5

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STATEMENT OF THE CASE

A concise statement of the facts of the case appears in the decision of the Eleventh Circuit at A-3-12 of petitioners' petition. Petitioners have not contested any of the findings of fact of the district court in this petition.

ARGUMENT

The principle on which the district court's grant of a preliminary injunction rests - that irreparable injury may be presumed from the fact of proven discrimination in violation of the fair housing statutes - is well settled in decisions of this and other courts. The decision of the Eleventh Circuit affirming the district court creates no conflicts with any decisions of this or other courts, and raises no new issues appropriate for review by this Court.

The decision of the Eleventh Circuit affirming the district court amply demonstrates the consistency of its analysis with settled law and merits quotation at some length.

> We agree with the district court that irreparable injury may be presumed from the fact of discrimination and violations of the fair housing statutes. In United States v. Hayes International Corporation, 415 F.2d 1038, 1045 (5th Cir. 1969), the old Fifth Circuit held that, "Where . . . an injunction is authorized by statute and the statutory conditions are satisfied . . . 'the usual prerequisite of irreparable

injury need not be established and the agency to whom the enforcement of the right has been entrusted is not required to show irreparable injury before obtaining an injunction. " [citations and footnote omitted]. The Hayes International court went on to state that "irreparable injury should be presumed from the very fact that the statute has been violated." Id; accord Atchinson, Topeka and Santa Fee Railway Co. v. Lennen, 640 F.2d 255, 259 (10th Cir. 1981); Heublein, Inc. v. Federal Trade Commission, 539 F. Supp. 123, 128 (D. Conn. 1982); U.V. Industries, Inc. v. Posner, 466 F. Supp. 1251, 1255-56 (D. Maine, 1979); 7 Moore's Federal Practice, §65.04(1)n. 7b. In the case at hand the district court found certain specific violations of the regulations implementing the Fair Housing Act. The Act and its regulations prohibit certain discriminatory practices without regard to their actual effect on the community. We hold that when a plaintiff who has standing to bring suit shows a substantial likelihood that a defendant has violated specific fair housing statutes and regulations, that alone, if unrebutted, is sufficient to support an injunction remedying those violations. See e.g., TOPIC v. Circle Realty, 377 F. Supp. 111, 114 (C.D. Cal. 1974), rev'd on other grounds, 532 F.2d 1273 (9th Cir. 1975), cert. denied, 429 U.S. 859, 97 S. Ct. 160, 50 L.Ed. 2d 137 (1976).

A-14-15.[1/]

In addition, however, the Eleventh Circuit emphasized that a finding of irreparable injury is a natural consequence of proven housing discrimination.

> . . . Several reasons explain why housing discrimination results in irreparable injury. First, a person who is discriminated against in the search for housing cannot remain in limbo while a court resolves the matter. He or she must find housing elsewhere, and once that housing is found, even if in a segregated neighborhood, it becomes difficult to disrupt new friendships and other community ties by uprooting oneself again.
>
> Second, in a case such as this one, the available housing where the discrimination is occurring could become filled during the pendency of a lawsuit, making corrective relief nearly impossible to enter - clearly, a court lacks the authority to order innocent white tenants to vacate apartments to remedy discrimination against blacks or other minorities by the apartment management. Thus preliminary injunctive relief may be necessary to insure that a remedy will be available. Third, monetary relief cannot correct the injury

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1/ Title VIII expressly authorizes the issuance of a permanent or temporary injunction upon a finding of violation of the prohibitions of the statute. See 42 U.S. C §3612(c).

completely. In Banks v. Perk, the court recited a litany of irreparable harm that occurs whenever housing discrimination occurs. That harm included, " the loss of safe, sanitary, decent and integrated housing, the loss of achieving integrated schools without the necessity of massive busing, the loss of housing which is accessible to jobs; and the loss of being unable to escape the neverending and seemingly unbreakable cycle of poverty. " 341 F. Supp. at 1185. See also Zuch v. Hussey, 394 F. Supp. 1028, 1052 (E.D. Mich., 1975) ("Steering" and "blacklisting" practices of real estate agents in Detroit area cause irreparable harm). Additionally as plaintiffs have asserted in this case housing discrimination causes irreparable injury by denying whites, as well as blacks, the benefits of living in an integrated community.

In sum, we hold that because of the subtle, pervasive, and essentially irremediable nature of racial discrimination, proof of the existence of discriminatory housing practice is sufficient to permit a court to presume irreparable injury. There being no evidence in the record tending to rebut this presumption we affirm the district court's conclusion that preliminary relief was appropriate in this case.

A-16-17.

The Eleventh Circuit's ruling is consistant with well-established decisions of this Court. See, U.S. v. San Francisco, 310 U.S. 16, 30 (1940), cited in Atchison, Topeka and Santa Fe Railway Co. v. Lennen, 640 F.2d 255, 259 (10th Cir. 1981); and Hecht Co. v. Bowles, 321 U.S. 321, 331 (1944). See also Lathan v. Volpe, 455 F.2d 1111 (9th Cir. 1971); and other cases cited in 7 Moore's Federal Practice, §65.04(1)n. 7b.

The injunction issued by the district court as modified by the 11th Cir. is reasonable in form and scope. There is no issue appropriate for review by this Court. That injunction is designed to correct specific practices of defendants found to violate the prohibitions of Title VIII. See A-8-12; 17-18.

CONCLUSION

For all the reasons stated, the petition should be denied.

Respectfully submitted,

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PROOF OF SERVICE

I, LOWELL JOHNSTON, Attorney for Respondent Metro Fair Housing Services herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 15th day of ~~July~~ Sept., 1984, I served copies of the foregoing Brief in Opposition on the several parties hereto as follows:

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